

The rights of a tenant when a property is auctioned

 By [Michelle Dickens](#)

10 Apr 2013

South African tenants are protected by the common law principle of "huur gaat voor koop", which essentially translates to the concept that a lease comes before a sale. This is good news for tenants, as this means that if the property they are renting is ever sold, the new landlord must honour the existing terms of the rental agreement.

When a property is purchased at auction and that property has an existing lease agreement in place, the tenant's tenure is secure under the "huur gaat voor koop" law. The new landlord steps into the shoes of the ex-landlord with whom the lease has been signed. As such, he takes on all the rights and responsibilities of the property, including issues such as maintenance, payment of levies and utilities.

However, there are certain situations when the "huur gaat voor koop" maxim will not be upheld. One such circumstance is when the lease agreement specifically contracts outside of the common law. In this case, the lease can be cancelled if the property is sold, provided the tenant is given reasonable notice, which is, in most cases, one calendar month.

The bank's rights take precedence

In addition, the lease will not be binding if the property is sold at auction by a sheriff of the court. Here, the mortgage preceded the lease agreement and the bank's rights take precedence over those of the tenant. In such cases, the tenant is given a reasonable notice period to vacate the property, although he is expected to continue to pay rent until such time as the property is sold.

Unfortunately, in this scenario, the tenant will be responsible for certain costs. The first cost that springs to mind will be the cost of the deposit on a new residence, as well as lease fees to the new agent and the costs incurred by another move - all of these costs are associated with the early termination of the lease.

When it comes to repayment of the deposit once the property has been auctioned, there are two possible scenarios. If the new landlord intends to keep the existing lease agreement in place, the tenant will continue to pay the new landlord his monthly rental fees and once the lease has run its course. It is up to the new landlord to return the deposit to the tenant. However, if the property has been sold by a sheriff of the court and the owner has been forced to liquidate his assets, it is unlikely that he will have the funds available to return the deposit to the tenant and the bank will not reimburse the tenant either.

Ultimately, as a tenant, it is important to know your rights when signing a lease. The "huur gaat voor koop" principle applies to both commercial and residential properties, and will protect the rights and tenure of the tenant, unless circumstances fall

outside of the common law.

ABOUT MICHELLE DICKENS

Michelle Dickens co-founded TPN Credit Bureau in 2000 and is now its CEO. TPN Credit Bureau is a registered credit bureau which specialises in the education and property markets. View my profile and articles...

For more, visit: <https://www.bizcommunity.com>